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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/822,918	04/13/2004	Frank Frederick	23770-RA	3578

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ATLANTA, GA 30339

EXAMINER

EDELL, JOSEPH F

ART UNIT	PAPER NUMBER
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3636

DATE MAILED: 08/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/822,918

**Applicant(s)**

FREDERICK, FRANK

**Examiner**

Joseph F. Edell

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 and 21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 07/12/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-19 and 21, drawn to a seating apparatus, classified in class 297, subclass 129.
  - II. Claim 20, drawn to method of hunting, classified in class 434.

The inventions are distinct, each from the other because of the following reasons:

Inventions Group I and Group II are related as product and method of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the method for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different method of using that product (MPEP § 806.05(h)). In the instant case the product of Group I can be used in a materially different method of using wherein the product is suspended from a tree branch and/or wherein the user kneels on the seat.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper.

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During a telephone conversation with T. Williamson on 09 August 2005 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-19 and 21. Affirmation of this election must be made by applicant in replying to this Office action. Claim 20 is withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

### ***Claim Objections***

2. Claims 2, 12 and 19 are objected to because of the following informalities:
  - a. claim 2, lines 2-3, "first end, middle section and second end" should read --a first end, middle section and second end--;
  - b. claim 12, line 2, "camouflage covering" should read --a camouflage covering--;
  - c. claim 19, line 2, "top portion" should read --a top portion--;
  - d. claim 19, lines 3-4, "said upper and middle portions" should read --an upper portion and a middle portion--.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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4. Claims 1-3, 5-8, 11, 17, and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,773,574 to Burgard.

Burgard discloses a seating apparatus that includes all the limitations recited in claims 1-3, 5-8, 11, 17, and 18. Burgard shows a seating apparatus having a backplane 12 (see Fig. 2), a seat 32 carried by the backplane, at least two straps 54 carried by the backplane, a plurality of side storage compartments 72,74 (see Fig. 1) of a generally cylindrical shape, a lower storage compartment 80 closably secured via a zipper, and a movable support kickstand (lower end of frame 10) wherein the backplane has a first end, a middle section, and a second end with at least two legs (see Fig. 2).

5. Claims 1-3, 5-11, 13, and 17-19 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,289,958 to Jay.

Jay discloses a seating apparatus that includes all the limitations recited in claims 1-3, 5-11, 13, and 17-19. Jay shows a seating apparatus having a backplane 12,26 (Fig. 4), a seat 50 (Fig. 6) carried by the backplane, at least two straps 40,42 (Fig. 7) carried by the backplane, a plurality of side storage compartments (see Fig. 7) of a generally cylindrical shape, a lower storage compartment 70 (see Fig. 8) closably secured via a zipper, means for carrying a sleeping bag (see Fig. 10) with bungee cords 92, a movable support kickstand 26 (Fig. 6), a colored cover sheet 90 (Fig. 8) carried by a top portion of the backplane wherein the backplane has a first end, a middle section, and a second end with at least two legs, and the cover sheet can be deployed to cover upper and middle portions of the backplane and seat.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jay in view of U.S. Patent No. 6,196,437 to Smith III.

Jay discloses a seating apparatus that is basically the same as that recited in claim 4 except that the side storage compartment lacks a drawstring, as recited in the claim. Smith discloses a seating apparatus similar to that of Jay wherein the storage compartment 6 (see Fig. 1) is closed via a drawstring 7. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the Jay such that the side storage compartment is closed via a drawstring, such as the seating apparatus disclosed in Smith. One would have been motivated to make such a modification in view of the suggestion in Smith that hook and loop fasteners, zippers, and drawstrings are functional equivalents.

8. Claims 12, 14-16, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jay.

Jay discloses a seating apparatus that is basically the same as that recited in claims 12, 14-16, and 21 except that the colors of the covering sheet are not specified, as recited in the claims. Although the coloring of the covering sheet is not specifically recited, modifying the covering sheet of Jay would have been obvious at the time of

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Applicant's invention because the use of coloring and/or patterns discovered by routine experimentation is ordinarily within the skill of the art. Further, it would have been an obvious matter of design choice to modify the covering sheet of Jay to have any suitable color appropriate for normal use of the seating apparatus in an outdoor environment and it appears that the covering sheet would perform equally well with any well known coloring used in the art.

### ***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following patents are cited to further show the state of the art with respect to seating apparatuses:

U.S. Pat. No. 4,836,938 to Kobasic	U.S. Pat. No. 4,955,517 to Maresca
U.S. Pat. No. 5,409,291 to Lamb et al.	U.S. Pat. No. 5,499,760 to Pielocik
U.S. Pat. No. 6,030,034 to Plohetski	U.S. Pat. No. 6,547,110 B2 to O'Hare

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph F. Edell whose telephone number is (571) 272-6858. The examiner can normally be reached on Mon.-Fri. 8:30am-5:00pm.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

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Status information for unpublished applications is available through Private PAIR only.


For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).



JE

August 10, 2005



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